IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 2792 of 2006 (O&M)
Date of Decision: August 4, 2006

B.B.Yadav ..... Petitioner

Versus

State of Haryana and others ..... Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mrs. Justice Nirmal Yadav

Present: Mr.Shailendra Jain, Advocate
for the petitioner.

Mr. S.K.Bishnoi, DAG, Haryana
for respondent Nos. 1 and 2.

Mr. Arun Walia, Advocate with
Mr. Ajay Nara, Advocate
for respondent No.3.

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ASHUTOSH MOHUNTA, J.

The challenge in this petition is to the notification dated 29.10.2001 (Annexure P-12) issued under Section 4 of the Land Acquisition Act, 1894 (for short `the Act') as well as to the notification dated 28.10.2002 (Annexure P-18) issued under Section 6 of the Act whereby land measuring 8.13 acres situated at village Caterpuri, District Gurgaon, owned by the petitioner has been acquired.

In brief, the facts giving rise to the present petition are that in recognition to the services rendered to the nation, the State of Haryana allotted 8.13 acres of land from the Government Agriculture Seed Farm at Daulatpur Nasirabad (renamed as Caterpuri) District Gurgaon to Commodore B.B.Yadav, recipient of Mahavir Chakra during the Indo-Pak war of 1971 vide letter dated 8.5.1979 (Annexure P-2). Although

the land was given to the petitioner as recognition for his exemplary valour and courage shown in the Indo-Pak war. However, this very land was sought to be acquired by the State of Haryana and a notification dated 16.11.1981 (Annexure P-3) under Section 4 of the Act was issued whereby land measuring 155.20 acres (including the land allotted to the petitioner) was sought to be acquired. However, on a representation made by the petitioner, the Government of Haryana decided to release the land allotted to the petitioner from acquisition. Copies of the letters showing the release of land from acquisition have been annexed as Annexures P-5 and P-6 with the writ petition. It is the case of the petitioner that after the release of his land from acquisition, he developed the land by making huge investments by planting trees etc. The site was declared as Forest Area by the Government of Haryana vide notification dated 14.8.1980 (Annexure P-20). The petitioner alleges that the land in question is within the vicinity of 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon, and as such any construction raised on the said land would be in violation of the provisions of notification dated 18.8.1987 (Annexure P-7) as well as the notification dated 28.4.1988 (Annexure P-8) issued by the Government of India whereby restrictions specified in Clause (b) of Section 7 of the Indian Works of Defence Act, 1903 have been imposed. Despite such a situation, the State of Haryana issued notification dated 29.10.2001 (Annexure P-12) under Section 4 of the Act, whereby it proposed to acquire the land of the petitioner for the development and utilization of land for residential, commercial and institutional purpose. The petitioner submitted his objections under Section 5-A of the Act to the Land Acquisition Collector who dismissed the objections and thereafter the State

of Haryana issued notification under Section 6 of the Act whereby the land of the petitioner which was allotted to him in the year 1979 was acquired. Both these notifications as well as the subsequent award are under challenge in the present writ petition.

A written statement has been filed on behalf of respondent Nos. 1 and 2 wherein factual position with regard to the allotment of land measuring 8.13 acres to the petitioner in recognition of the gallantry award of Mahavir Chakra by the President of India as well as the release of the said land in the year 1982 has been admitted. It has further been elucidated that the petitioner was granted full opportunity of hearing before rejecting his objections under Section 5-A of the Act.

The petitioner has filed replication to controvert the averments made in the written statement filed on behalf of respondent Nos. 1 and 2 wherein the averments made in the writ petition have virtually been reiterated.

Mr. Shailendra Jain, counsel for the petitioner, has firstly contended that the land of the petitioner was developed as forest area and could be used only for this purpose as per the notification issued by the Government of India on 14.8.1980 (Annexure P-20). It is contended that forest land could not be acquired without prior permission of the Central Government under Section 2 of the Forest (Conservation) Act,1980 and such permission has not been obtained in the present case. In support of his contention, learned counsel has relied on the judgment in ***Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority and others***, (1997) 11 SCC 605 wherein the Hon'ble Apex Court has held that in a case of user of forest land for non-forest purposes, prior approval

of the Central Government is necessary. Learned counsel has also relied on the judgment in ***T.N. Godavarman Thirumulkpad etc. v. Union of India and others*** AIR 1997 SC 1228 wherein also the Hon'ble Supreme Court has held that for all non-forest activity prior permission of the Central Government is necessary. On the basis of the above, learned counsel contends that as no prior permission was sought in the present case from the Central Government, therefore, the notifications are liable to be quashed.

In reply, counsel for the State has submitted that although the land in dispute was notified by the Forest Department vide notification dated 14.8.1980 and the said land was closed for regeneration for a period of 10 years with effect from the date of publication of the notification and during this period the rights of private persons in and over the said land were suspended, however, as the period of 10 years has already been completed i.e. much prior to the issuance of notification under Section 4 of the Land Acquisition Act, therefore, no prior permission of the Central Government was required. It has further been averred that as per the intimation given the land is no more with the Forest Department.

As the land in dispute was notified to be a forest area for 10 years and this period having elapsed much prior to the issuance of notification under Section 4 of the Act and as the Forest Department has clearly stated that the land in dispute is not with the Forest Department, hence, there is no requirement of seeking prior permission of the Central Government in the present case, therefore, we reject the argument raised by the counsel for the petitioner.

It has next been contended by the counsel for the petitioner that no proper opportunity of hearing was given to the petitioner while disposing

of his objection petition under Section 5-A of the Act. It is contended that the Land Acquisition Officer has passed a very cryptic and non-speaking order while recommending the case to the Government for acquisition. The counsel has placed on record the Recommendation Report, under Section 5A of the Act, of the Land Acquisition Collector (Annexure P-17) by which the Land Acquisition Officer has used a stock line - "it is proper to acquire the land" while dismissing the objections under Section 5-A of the Act. It is contended that it was the duty of the officer to deal with the objections raised by the petitioner and decide the same by passing a speaking order with reasons to justify the acquisition. Learned counsel has relied on a judgment of the Apex Court in ***Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and others*** (2005) 7 SCC 627 in support of his contention.

The State in its reply has, however, submitted that the petitioner was given the opportunity of hearing and after hearing him the objections filed by him were dismissed.

While dealing with the objections under Section 5-A of the Act filed by the petitioner, the Land Acquisition Officer was duty bound to objectively deal with the same and should have passed an order with reasons, however briefly, to justify the acquisition. In ***Hindustan Petroleum Corpn. Ltd.'s case (supra)*** the Apex Court has held as under:-

> *"The Court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold the hands and refuse to grant a relief to the writ petitioner. When the decision making process itself is in question, the power of judicial review can be exercised by the court in the event of the order impugned suffers from well-known principles viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power, it must be done in a fair and reasonable manner."*

The Hon'ble Apex Court has observed that the right to make objections is akin to a fundamental right. The Apex Court in the case of ***Munshi Singh v. Union of India*** (1973) 2 SCC 337 has held as under:-

> *"7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity or persuading the authorities concerned that acquisition of the property belonging to that person should not be made ..... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."*

In the present case, the dismissal of the objections filed by the petitioner by observing that it is proper to acquire the land does not fulfil the tests laid down by the Hon'ble Apex Court. The hearing of the objections must be effective and not a mere formality. It has been held by the Apex Court that formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdiscretion in law. It has also been held by the Hon'ble Supreme Court in ***Om Parkash v. State of U.P.*** (1998) 6 SCC 1 that inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, atleast observation regarding Article 14, vis-a-vis, Section 5-A of the Land Acquisition Act would remain apposite.

Thus, we hold that the dismissal of the objections under Section 5-A of the Act by the Land Acquisition Officer was without application of mind and without giving proper opportunity of hearing to the petitioner and

there has been non-compliance of Section 5-A of the Act.

It has next been contended by the counsel for the petitioner that a portion of the acquired land is situated within the vicinity of 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon. The Government of India has issued notification dated 18.8.1987 (Annexure P-7) whereby restrictions with regard to the use and enjoyment of the land have been imposed and directions have been issued that the land be kept free from buildings and other obstructions. The said notification has been issued under Section 3 read with Section 7(b) of the Indian Works of Defence Act, 1903, which is reproduced as under:-

> *"3. Declaration and Notice that restrictions will be imposed:-*
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> *(1) Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.*
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> *(2) The said declaration shall be published in the official Gazette and shall state the district or other territorial division in which the land is situated and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in Section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenience place in the locality.*
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> *(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.*
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> *7. **Restrictions**:- From and after the publication of notice mentioned in Section 3, sub-section (2) such of the following restrictions as the Central Government may in its discretion declare therein shall attach with reference to such land, namely:-*
>
> *(a) xx xxx*

(b) within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations namely:-

(i)no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected;

Provided that, with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered;

Provided also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the General Officer Commanding the District; and

(ii)live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe;

(c)within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) and (b) shall apply with the following additional limitation, namely:-

"no building or other constructions on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected;

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, a building or other construction on the surface may be maintained and open railings and dry brushwood fences may be exempted from

this prohibition."

It is contended that as there were restrictions imposed by virtue of Section 3 sub-section 7 of the Indian Works Defence Act, 1903, hence the purpose of acquisition could not be achieved because no residential or commercial activity could be carried out within a radius of 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon.

We have perused the aforementioned provision carefully and are of the considered opinion that the State of Haryana cannot make use of the land for residential and commercial purposes in view of the restrictions imposed under Section 3 read with Section 7 (b) of the Indian Works Defence Act, 1903. No construction activity would be carried out within 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon. The State has not denied that a part of the acquired land is not within the aforementioned restricted zone. The proviso to Section 7 also shows that it is only the huts, fences or other constructions of wood or other material which can easily be destroyed or removed that can be allowed to be maintained and erected.

In the present case, as the residential, commercial and institutional purpose could not be achieved because of the restrictions imposed by Section 3 sub-section 7 on a part of the land acquired, therefore, we are of the considered opinion that the acquisition of the land of the petitioner in the present case is a colourable exercise of power.

There is another aspect of the matter. The land in question was allotted to the petitioner as a reward for gallantry shown by him during the Indo-Pak war of 1971 as also for the honour given to him by the President

of India with the conferment of Gallantry Award of Mahavir Chakra to him. Once the Government of Haryana had allotted the land to the petitioner in recognition of his services to the nation during the Indo-Pak war, then it would be very unfair on its part to take it back by acquiring the same afterwards.

It has been contended on behalf of the State that the present petition suffers from laches as the Land Acquisition Collector had announced his award on 18.11.2003 whereas the present writ petition has been filed in the year 2006.

A perusal of the facts in the present case shows that the petitioner has earlier filed C.W.P. No. 11482 of 2003 challenging the impugned notifications under Sections 4 and 6 of the Act. This Court vide order dated 30.1.2006 had passed the following order:-

> *"The perusal of the paper book shows that the same is in a very jumbled condition.*
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> *The amended writ petition has been filed along with an application for seeking amendment of the writ petition. Subsequently, another application has been filed appending some more annexures. In these circumstances, it is not possible for this Court to adjudicate on the real constroversy involved in the present writ petition.*
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> *Faced with the aforesaid difficulty, the Learned Counsel for the petitioner prays that the present writ petition may be dismissed as withdrawn with a liberty to the petitioner to file a fresh petition on the same cause of action. The learned counsel further states that there is an interim order dated July 25, 2003 passed by this Court staying dispossession of the petitioner and since the aforesaid interim order dated July 25, 2003 has operated more than 2 & ½ years, the same order should be continued for a period of four weeks.*
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> *We find that the prayer made by learned counsel is just and fair. Accordingly, the present writ petition is dismissed as withdrawn with a liberty to the petitioner to file a fresh petition on the same cause of action. The interim order dated July 25,2003 shall continue to operate for a period of one month from today.*

In case any fresh petition is filed by the petitioner, the respondents shall not take any objection with regard to delayed filing of the said writ petition.

Sd/- (Viney Mittal), Judge
January 30,2006 *Sd/- (S.N. Aggarwal), Judge"*

In view of this situation, the respondents cannot raise objection at this stage with regard to laches in filing the present petition. Therefore, the contention on behalf of the State is rejected.

In view of the fact that the objections under Section 5-A of the Act were disposed of in accordance with law as also in view of the fact that the purpose of acquisition cannot be achieved because the acquired land is within the vicinity of the Air Force Station coupled with the fact that it would be merely unfair for the State to take back the land from the petitioner which had been given to him in recognition of his receiving a Gallantry Award, we quash the notifications dated 29.10.2001 (Annexure P-12) and 28.10.2002 (Annexure P-18) as well as the Award dated 18.11.2003 (Annexure P-19).

The writ petition is accordingly allowed.

(ASHUTOSH MOHUNTA)
JUDGE

4.8.2006 **(NIRMAL YADAV)**
Rupi **JUDGE**